

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2014-00001, to modify condition # 4 of ZBA FY2012-00021, to allow the unit for rental to be occupied by four unrelated individuals rather than three, under Section 10.33 of the Zoning Bylaw, with the following conditions:

1. Condition #4 of ZBA FY2012-00021 is hereby modified to allow up to four unrelated individuals, as defined under Section 12.162 of the Zoning Bylaw. All other conditions of the 2012 Special Permit remain in effect.
2. Prior to the issuance of a Certificate of Occupancy for the new unit, the following shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting:
 - a. A copy of the actual lease to be used for the rental unit
 - b. A Complaint Response Plan
 - c. Proof of registration under the Amherst Residential Rental Property Bylaw. Loss or suspension of a rental permit shall constitute a violation of this condition.
3. 18 months from the Certificate of Occupancy issue date, the owner shall appear before the Zoning Board of Appeals at a public meeting. The purpose of the public meeting shall be for the Board to review compliance with the conditions of the permit.
 - a. In advance of the meeting, the owner shall be responsible for providing notification to abutters in accordance with Town procedures for notice under Chapter 40A, Section 11. This may require the owner to obtain a Certified List of Abutters and provide a minimum of two week public notice.
4. The owner shall take all reasonable steps to ensure that the property does not constitute a nuisance due noise as defined under the Unlawful Noise provision of the General Bylaw.
5. Violations of provisions of the Zoning Bylaw, or Town Bylaw, may constitute evidence of non-compliance with the provisions of this permit.
6. There shall be no upholstered furniture allowed on the exterior of the premises.
7. There shall be no vehicles associated with this property parked on Shays Street.

Eric Beal 
Eric Beal, Chair
Amherst Zoning Board of Appeals

9/9/13
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Michael Ben-Chaim, Colonial Village, Unit 91, Amherst, MA 01002

Date application filed with the Town Clerk: July 11, 2013

Nature of request: For a Special Permit to modify condition # 4 of ZBA FY2012-00021, to allow the unit for rental to be occupied by four unrelated individuals rather than three, under Section 10.33 of the Zoning Bylaw

Address: 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)

Legal notice: Published on July 31, 2013 and August 7, 2013 in the Daily Hampshire Gazette and sent to abutters on July 30, 2013

Board members: Eric Beal, Carolyn Holstein, Pari Riahi

Staff members: Jeff Bagg, Senior Planner

Submissions:

- ZBA application, filed with the Town Clerk on July 11, 2013
- Letter/Project Summary
- Special Permit ZBA FY2012-00021, with approved plans
- Project Application Report, dated August 9, 2013

Public Hearing: August 15, 2013

The applicant, Michael Ben-Chaim, presented the petition, summarized as follows:

- The Special Permit granted in 2012 limited the number of people allowed to occupy the rental unit to three people instead of the four allowed in the Zoning Bylaw. He stated that the condition was put on the permit without discussion and that the limitation results in a 25% loss of revenue. The revenue from the rental unit would have helped to fund payment for the cost involved in constructing the second unit. He stated that there was no discussion of the condition and its limitation has caused him to reconsider the project.
- In order for him to proceed with the creation of the owner occupied duplex, he requires the ability to rent to four people. He stated that if he is not given permission to rent to four he will not construct the project and would continue to rent the existing house to four students, as he is doing currently.

The Board discussed the previous decision, which limited the number of tenants. Mr. Beal, who was on the original panel, noted there was significant discussion on the design of the building but that he did not recall why this limitation was applied as a condition. Ms. Riahi and Ms. Holstein cited portions of the decision, which note concerns expressed by the neighbors about the potential negative impact from the creation of a new rental unit. It was noted that a finding of that permit cited the limitation of three tenants as a mitigation measure.

The Board discussed parking. It was noted that the previously approved site plan shows five parking spaces for residents and one visitor space. Mr. Ben-Chaim explained that he has only one vehicle, so there would be one parking space remaining for each of the four tenants. The Board determined that this would be acceptable, noting that it did not require any changes to the approved site plan and that the condition of the 2012 permit, which limits the number of vehicles parked regularly on the property to five, remains in place.

The following members of the public spoke regarding the petition:

- Simon Keochakian, 76 Shays Street, stated that the Board should not judge the interest of the neighborhood by the fact that only two people are present, noting that many other people are interested but are on vacation. He opposes the Board allowing the additional tenant. He explained that they did not appeal the previous decision based on the reading of all the conditions together. He expressed concern with the negative impacts of allowing an additional tenant on the property. He stated that since the property has been rented there have been issues with trash not being handled properly and multiple calls to the Fire and Police Department, which shows a lack of ability for the applicant to manage the property.
- Avril De La Cretaz, 31 Shays Street, stated that she is the direct abutter and urged the Board to deny the request for the additional tenant. She stated that density is a big issue and that one additional person could make a significant impact. She cited existing issues associated with the applicant's decision to rent the house to four tenants, including noise, parties, cars and calls to the Police and Fire Departments.

Mr. Beal stated that he is in favor of granting the request but noted that a critical part of the previous permit was owner occupancy, something that should not be considered amendable. Ms. Riahi and Ms. Holstein expressed concern with granting the approval noting that the previous decision cited a lot of neighborhood resistance to the proposal for a rental unit and that the decision was clear that the limitation on the number of tenants was to mitigate the potential impact.

The Board discussed the applicant's request for a refund of a previous application fee. Mr. Bagg stated that an original application in 2012 was withdrawn and the Board recommended that the applicant request a refund at re-application. During the 2012 application for the duplex no such refund request was made. Mr. Bagg recommended that the Board not grant the refund as the fees are nominal and often do not even cover the Town's cost of publishing the legal advertisement. The Board determined that no refund would be granted.

Specific Findings:

The Board discussed several conditions required to grant this permit:

- A Compliant Response Plan and a copy of the actual lease to be used shall be reviewed and approved prior to a Certificate of Occupancy on the duplex granted under the 2012 Special Permit. The Board concluded that the Complaint Response Plan would give neighbors the appropriate contact information in the case of issues. The lease is intended to contain certain language informing the tenants of various town bylaws, such as the Nuisance House Bylaw, Keg Licensing Bylaw and Noise Bylaw.
- A review period should be a condition of the permit. The Board noted that several Special Permits have been granted with a condition requiring that 18 months after the issuance of a Certificate of Occupancy, an applicant is required to appear before the Board at a public meeting. The purpose of the meeting is for the Board to review compliance with the conditions of the permit and to hear from neighbors as to how the use is being operated and managed. The condition contains specific language notifying abutters of the public meeting.

The Board made the following general finding in support of granting the request:

- The benefit of allowing the additional tenant is that it may allow the applicant to proceed with the previous Special Permit, resulting in the construction of a new unit with an owner occupying the property and the site being improved with appropriate parking and landscaping. All of these factors are enforceable through the conditions on that permit.

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.

The Board found that the proposal remains within the definition of a two family dwelling granted under the previous permit and therefore incorporated the previous finding, as follows:

- The property is located close to Route 116, a main thoroughfare through Town. The proposal for two dwelling units is suitable in the Neighborhood Residence (R-N) Zoning District, the purpose of which is to “provide for residential areas of medium densities...adjacent to higher density residential districts, near arterial or primary residential streets, or in areas transitional between the lower density districts and other districts”.
- The proposal is compatible with other uses in the same district because, although primarily consisting of single family dwellings, the neighborhood contains other multifamily uses, including the abutting property to the north, which is a two-family dwelling. The Zoning District allows two-family dwellings by Special Permit and single family dwellings by-right. The proposal intends owner-occupancy and the permit requires the same. The intent of having the owner living on the property is to provide better management and better control of the tenants. It will also enable the use to be more compatible with the other owner-occupied homes.
- The property contains more than the required minimum lot area for two units as it is over an acre (43,560 square feet) where 26,000 square feet is required to create two units.

10.382, 10.383 & 10.385 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.. The Board finds that allowing one additional tenant does not disturb the findings made under the previous permit, as follows:

- The applicant proposed owner-occupancy and it is a requirement of the 2012 Special Permit. The requirement is intended to ensure better management of the property and control over the tenant activity.
- The site improvements will remove existing visually offensive structures and will improve the condition of the driveway and landscaping on the property. The new structure has been found to be compatible in scale and design to the existing building.
- The 2012 Special Permit includes a condition that excessive noise associated with the use will render the permit null and void and requires additional screening be installed along the east property line to mitigate any visual impact to the abutting historic Baird residence.

Additionally, the Board found that this permit is conditioned to require the property be registered under the Town's Rental Registration system; a lease be submitted to the Board for approval; and, that a Complaint Response Plan be submitted. Each of these requirements would help to mitigate any impact of allowing an additional tenant.

10.384 and 10.389 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use; The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. The Board found that the addition of one additional tenant did not disturb the previous findings, as follows: The new construction will be built in accordance with applicable building codes, including means of egress and other safety requirements. The Management Plan identifies adequate areas for the storage of waste and recycling in the basement. The site plan provides adequate parking areas, walkways, and lighting.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The Board incorporated the previous findings, as follows: The approved site plan provides six parking spaces (five for the use plus one guest space) for the two units, which exceed the four spaces required under Section 7.000. The 2012 Special Permit includes a condition requiring the driveway and parking areas to be constructed and designed in accordance with Section 7.101. There are no signs proposed as part of this application.

10.387 - The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. A condition of this permit prohibits the parking of vehicles on Shays Street. Otherwise, the Board incorporated the previous findings, as follows: The approved site plan provides for adequate areas for vehicles to maneuver and the permit includes a condition requiring each space to be demarcated and maintenance of site lines at the driveway entrance. The approved plans include pedestrian lighting fixtures and walkways.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The Board found that there is a demonstrated need for additional rental housing in the Town and that by permitting the additional tenant, it is encouraging the creation of an owner occupied two family dwelling, which is beneficial. Based on the findings herein, the Board found that, with the combination of the conditions of this permit and the conditions of the previous permit, the addition of one additional tenant will not be significantly different than the previous approval.

Zoning Board Decision

Mr. Beal MOVED to approve the application with conditions. Ms. Holstein seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2014-00001, to modify condition # 4 of ZBA FY2012-00021, to allow the unit for rental to be occupied by four unrelated individuals, under Section 10.33 of the Zoning Bylaw, with conditions.

Eric Beal

ERIC BEAL

(6)

Carolyn M. Holstein

CAROLYN HOLSTEIN

Partriah

PARTRIAHI

FILED THIS 9th day of Sept., 2013 at 4:17 pm
 in the office of the Amherst Town Clerk Dusan Audette, Asst.
 TWENTY-DAY APPEAL period expires, September 29, 2013.
 NOTICE OF DECISION mailed this 10th day of September, 2013
 to the attached list of addresses by Jeffrey R. Bagg, for the Board.
 COPY OF NO APPEAL issued this _____ day of _____, 2013.
 NOTICE OF PERMIT or Variance filed this _____ day of _____, 2013,
 in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Michael Ben-Chaim

For a Special Permit to modify condition # 4 of ZBA FY2012-00021, to allow the unit for rental to be occupied by four unrelated individuals rather than three, under Section 10.33 of the Zoning Bylaw

On the premises of 28 Shays Street

At or on Map 20A, Parcel 15, R-N Zoning District

NOTICE of hearing as follows mailed (date) July 15, 2013
to attached list of addresses and published in the Daily Hampshire Gazette
dated July 31, 2013 and August 7, 2013

Hearing date and place August 15, 2013 (Town Hall)

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| <p style="text-align:center">LEGAL NOTICE</p> <p>The Amherst Zoning Board of Appeals will meet on *Thursday, August 15, 2013*, at 6:30 P.M. in the TOWN ROOM, Town Hall, to conduct the following business:</p> <p>PUBLIC HEARING: ZBA FY2014-00001 - Michael Ben-Chaim - For a Special Permit to modify condition # 4 of ZBA FY2012-00021, to allow the unit for rental to be occupied by four unrelated individuals rather than three, under Section 10.33 of the Zoning Bylaw, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)</p> <p>ERIC BEAL, CHAIR AMHERST ZONING BOARD OF APPEALS</p> <p style="text-align:right">July 31, August 07</p> <p>3286130</p> |
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SITTING BOARD and VOTE TAKEN:

a Special Permit, ZBA FY2014-00001, to modify condition # 4 of ZBA FY2012-00021, to allow the unit for rental to be occupied by four unrelated individuals rather than three, under Section 10.33 of the Zoning Bylaw

Eric Beal - Yes

Carolyn Holstein - Yes

Pari Riahi - Yes

DECISION: APPROVED with conditions as stated in permit

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Michael Ben-Chaim
Address Colonial Village, Unit 91
City or Town Amherst, MA 01002

Identify Land Affected: 28 Shays Street
(Map 20A, Parcel 15, R-N Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

28 Shays Street Amherst
Street City or Town

The record of title standing in the name of
Michael Ben-Chaim
Name of Owner

Whose address is 28 Shays Street Amherst MA 01002
Street City or Town State Zip Code

By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 10642 Page 326
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2014-00001
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

Eric Beal (B) Chairman
(Board of Appeals)
Carolyn M. Harteis Clerk
(Board of Appeals)

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____

Register of Deeds
Notice to be recorded by Land Owner

Town of



AMHERST

Massachusetts

TOWN HALL
4 Boltwood Avenue
Amherst, MA 01002-2351

ZONING BOARD OF APPEALS
(413) 259-3040
(413) 256-4041 [Fax]
planning@amherstma.gov

Applicant: This form must be returned to the Amherst Planning Department.

PROOF OF FILING

Amherst Zoning Board of Appeals
ZBA FY2014-00001

On this _____ day of _____, 2013, a Special Permit, ZBA FY2014-00001, and accompanying documents were recorded in the Hampshire County Registry of Deeds.

For the property owned by:
Michael Ben-Chaim

Located at:
28 Shays Street
Amherst, MA 01002
(Map 20A, Parcel 15, R-N Zoning District)

Book _____ Page _____ Document # _____

Register

Applicant: This form must be returned to the Amherst Planning Department.

Town of Amherst Abutter List

| <i>Parcel ID</i> | <i>Parcel Address</i> | <i>Owner1</i> | <i>Owner2</i> | <i>Address</i> | <i>City/Zip</i> |
|------------------|-----------------------|--------------------------------------|---------------------------------|----------------------|------------------------------|
| 17C-27 | SHAYS ST | HOFFMAN, JEAN | | 74 OLD STAGE RD | WEST HATFIELD, MA 01088-9513 |
| 20A-14 | 2 SHAYS ST | TZENG, YOU PAN & HAN, SUSAN | C/O EAGLE CREST PROPERTY MINGMI | 55 NORTH PLEASANT ST | AMHERST, MA 01002 |
| 20A-32 | 5 SHAYS ST | KEOCHAKIAN, GREGORY & SYLVIA | | 5 SHAYS ST | AMHERST, MA 01002 |
| 20A-15 | 28 SHAYS ST | BEN-CHAIM, MICHAEL | | 28 SHAYS ST | Amherst, MA 01002 |
| 20A-31 | 31 SHAYS ST | DE LA CRETAZ, AVRIL | | PO BOX 3045 | AMHERST, MA 01004-3045 |
| 20A-17 | 38 SHAYS ST | HOFFMAN, JEAN | | 74 OLD STAGE RD | WEST HATFIELD, MA 01088-9513 |
| 20A-30 | 41 SHAYS ST | CRAY, WILLIAM J & SABINE H | | 41 SHAYS ST | AMHERST, MA 01002 |
| 20A-164 | 49 SHAYS ST | ACKERMAN, TEDD H | | 49 SHAYS ST | AMHERST, MA 01002 |
| 20A-18 | 52 SHAYS ST | HANNIGAN, SAMUEL T & TAMMY M | | 52 SHAYS ST | AMHERST, MA 01002 |
| 20A-42 | 59 SHAYS ST | ACKERMAN, JENNIFER | | 375 SHAYS ST | AMHERST, MA 01002 |
| 17C-60 | 130 WEST ST | SHEN, TONG & YIN, XIAOLING | | 130 WEST ST | AMHERST, MA 01002 |
| 17C-24 | 136 WEST ST | FURCOLO, TINA L & HIGHAM, DAVID G | | 136 WEST ST | AMHERST, MA 01002 |
| 17C-25 | 144 WEST ST | CZAP, MARGOT | | 144 WEST ST | AMHERST, MA 01002 |
| 17C-26 | 152 WEST ST | CAMPBELL, ANDREW C & FLYNN, SIMONE I | | 152 WEST ST | AMHERST, MA 01002 |

| <i>Parcel_ID</i> | <i>Parcel_Address</i> | <i>Owner1</i> | <i>Owner2</i> | <i>Address</i> | <i>City/St/Zip</i> |
|------------------|-----------------------|------------------------------|------------------|------------------|--------------------|
| 20A-3 | 165 WEST ST | GOLDSTEIN, WARREN J | SCHAPER, DONNA E | 235 EAST 18TH ST | NEW YORK, NY 10003 |
| 20A-33 | 188 WEST ST | FENNER, HEINRICH & EVA MARIA | | 188 WEST ST | AMHERST, MA 01002 |
| 20A-34 | 196 WEST ST | GRYBKO, CHARLES V | | 196 WEST ST | AMHERST, MA 01002 |